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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,322	12/20/2001	David William Koenig	KCC 4788 (K.C. No. 15,397	6145
321 7590 03/11/2005 SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			EXAMINER COLE, ELIZABETH M	
			ART UNIT 1771	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/029,322  
Filing Date: December 20, 2001  
Appellant(s): KOENIG ET AL

\_\_\_\_\_  
Christopher M. Goff  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 13, 2004.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

6,217,889	Lorenzi et al	04-2001
WO 97/31092	Romano et al	8-1997
WO 00/66187	Mandell et al	11-2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 9-11, 14-17, 20-23, 26-28, 31-35, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandell et al, WO 00/66187 in view of Romano, WO 97/31092. Mandell discloses an absorbent product comprising an osmoregulation protector such as a betaine. See page 16, line 12 – page 17, line 33. The osmoregulation protector may be incorporated into a shell material such as a superabsorbent particle. See page 28. The betaine acts to prevent the formation of ammonia. See page 3, lines 6-9. Mandell differs from the claimed invention because Mandell does not disclose the claimed amounts of osmoregulation protector employed in terms of milligrams per grams of product. However, Mandell teaches employing an effective amount. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the amount to employ through the process of routine experimentation. Mandell also differs from the claimed invention because Mandell does not specifically disclose glycine betaine. Romano teaches employing glycine betaine in an amount which is effective to interact with bacteria in a wet wipe. See page 7, line 13 – page 8, line 28. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed glycine betaine as the particular betaine in the invention of Mandell et al. One of ordinary skill in the art would have been motivated to employ glycine betaine since Romano teaches that it is a suitable betaine for use in interacting with bacteria in wipes.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandell in view of Romano, as applied to claims above, and further in view of Lorenzi et al, U.S. Patent No. 6,217,889. Mandell does not teach incorporating liposomes into the absorbent article. Lorenzi teaches that liposomes may be incorporated into personal absorbent articles and cleansing wipes along with betaines in order to enhance the skin soothing properties of the absorbent articles and cleansing wipes. See col. 15, lines 1-21 and col. 24, line 12-15. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further incorporated liposomes into the material of Mandell as taught by Lorenzi, motivated by the expectation that this would further enhance the skin soothing properties of the articles.

#### **(10) Response to Argument**

Appellant argues that Romano does not disclose glycine betaine. In support of this position, Applicant notes that at page 8, lines 14-15, Romano states that the sum of the R1, R2 and R3 radicals is from 14 to 24 carbon atoms. However, looking at the entire disclosure of Romano concerning betaines, it is clear that the clause concerning the sum of R1, R2 and R3 is a preferred embodiment rather than a requirement of the disclosure. This is evident from the fact that Romano discloses C10 alkyl dimethyl betaine as a preferred betaine surfactant at page 8, line 18-19. C10 alkyl dimethyl betaine would have a sum  $R1 + R2 + R3 = 12$ , as R1 would equal ten, (C10 refers to ten

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carbon atoms) and dimethyl refers to each of R2 and R3 being a methyl group, (CH<sub>3</sub>), or having one carbon atom each. Therefore, the wherein clause at line 14, page 8 of Romano cannot be a requirement for betaines which are employed in the invention, since Romano specifically provides an example of a "particularly suitable" betaine which does not meet the requirements of the wherein clause reciting that the sum of R1, R2 and R3 radicals is equal to from 14 to 24 carbon atoms. Another fact which shows that Romano can not have meant the wherein clause stating that the sum of R1, R2 and R3 radicals is equal from 14 to 24 carbon atoms at line 14 to be a requirement is that Romano states that R1 is preferably from 8 to 18, and R2 and R3 are each preferably 1. Therefore, preferred embodiments where, for example, R1 is 8, 9, 10 or 11, and R2 and R3 are each respectively 1, would result in the sum of R1, R2 and R2 being 10-13, which also would not meet the wherein clause. Applicant argues that Romano states that the preferred range for R1 is 12-14, but this is the more preferred range, not the preferred range.

Appellant argues the Examiner is impermissibly picking and choosing by relying on only those portions of the Romano reference which support the position that Romano does not require the sum of R1, R2 and R3 to be 14-24 carbon atoms while ignoring those portions which lead away from this conclusion. However, as the Appellant rightly points out, a reference must be considered in its entirety, as a whole. Considering the entire Romano reference, including the indisputable facts that Romano teaches preferred embodiments wherein the sum of R1, R2 and R3 does not fall within the range

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of 14-24 and further provides C10 alkyl dimethyl betaine which has a sum of  $R1+R2+R3 = 12$  as an example of a particularly suitable betaine, it is clear that Romano did not intend to require that only betaines which met the wherein clause at line 14 reciting that the sum of R1, R2 and R3 radicals is equal to from 14 to 24 carbon atoms be used. Considering the reference as a whole for all that it discloses clearly shows that Romano disclosed preferred embodiments and particular examples of suitable materials which did not meet the wherein clause at line 14. This does not mean that Romano does not state that the more preferred range for R1 is 12-14 which would result in compounds which produced a sum of R1, R2 and R3 which did fall within the wherein clause, but it does mean that the disclosure of Romano is not limited to the most preferred embodiments, but is available for all that it fairly teaches and suggests.

Appellant argues that the only specific betaine compounds listed by Romano are lauryl betaine and coconut betaine. However, as set forth above, Romano clearly teaches C10 alkyl dimethyl betaine as a particularly suitable betaine.

Appellant argues that where a term can be given two meanings that the narrower meaning should be used. However, this is not a case where a term can be given two alternate meanings. In this case, the issue is whether or not a particular clause should be read as an absolute requirement of the disclosed compounds or if it denotes a preferred embodiment. In the instant case, since it is a fact that Romano teaches an embodiment, C10 dimethyl betaine as "particularly suitable" which clearly does not

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meet the requirements of the clause, it is clear that the clause in question can not be a requirement for every suitable compound.

Appellant argues that even supposing that the clause reciting that R1, R2 and R3 equal 14-24 is a preferred embodiment, Romano would still not disclose the claimed invention because Romano does not specifically point out glycine betaine, but that one of ordinary skill in the art would have to choose from many possible combinations of R1, R2 and R3. However, glycine betaine is the simplest of all the possible combinations which Romano sets forth, since in glycine betaine, each of R1, R2 and R3 are methyl groups, (CH<sub>3</sub>), so that R1, R2 and R3 each equal 1. It is the examiner's position that the skilled artisan in this instance would immediately envisage glycine betaine from the disclosure set forth in Romano since it is the simplest of all the compounds disclosed by Romano. Further, Romano already teaches that it is preferred that R2 and R3 each equal 1, and thus the skilled artisan looking at the compound disclosed by Romano would already see R2 and R3 as being methyl groups. Finally, it is noted that Romano does specifically disclose that R1 can equal 1, (i.e. be a methyl group). Therefore, Romano does disclose glycine betaine, or at least, the skilled artisan would immediately envisage glycine betaine from the disclosure of Romano, since it is the simplest possible compound that can be formed to meet the requirements set forth on page 8 of Romano.



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With regard to claims 12-13, Appellant argues that Lorenzi fails to disclose the particularly claimed betaines. However, as set forth above, Romano teaches the claimed betaine. Lorenzo was relied upon to show that it would have been obvious to have incorporated liposomes into the Mandell et al absorbent article, in order to impart skin soothing properties to the absorbent article

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Elizabeth M. Cole

ELIZABETH M. COLE  
PRIMARY EXAMINER

Conferees:

Terrel Morris - *Tm*

Rena Dye - *RD*